

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MERVIN ROBERT HADDEN,

Petitioner,

07 Civ. 7909(PKC)

-against-

ORDER DENYING
CERTIFICATE OF
APPEALABILITY

MICHAEL B. MUKASEY,

Respondents.

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P. KEVIN CASTEL, U.S.D.J.

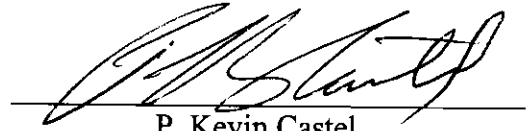
In a Memorandum and Order dated June 3, 2008, this Court denied the petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2241. In doing so, this Court wrote as follows:

The certificate of appealability provision, 28 U.S.C. § 2253(c), is inapplicable to this petition brought under 28 U.S.C. § 2241. Drax v. Reno, 338 F.3d 98, 106 (2d Cir. 2003) (citing Murphy v. United States, 199 F.3d 599, 601 n. 2 (2d Cir.1999)). With respect to in forma pauperis status on any appeal taken from this Memorandum and Order (or the resulting final judgment), the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal would not be taken in good faith.

I now have the mandate of the United States Court of Appeals for the Second Circuit which describes the petition as having been brought under 28 U.S.C. § 2255 and notes that the file “does not contain either a certificate of appealability or a denial thereof. . . .” To the extent that the petition is construed as having been brought under 28 U.S.C. § 2255, a certificate of appealability is denied because the petitioner has “not has made a substantial showing of the denial of a constitutional right.” If the certificate of appealability provision is construed as applicable to a petition under 28 U.S.C. § 2241, it is denied for the same reason.

SO ORDERED.

Dated: New York, New York
August 4, 2008


P. Kevin Castel
United States District Judge